

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: _____)

Cypress Creek Landfill)
6315 12th Avenue)
Tuscaloosa, Alabama 35405)
Solid Waste Disposal Permit No. 63-18)

Consent Order No. 09-XXX-CSW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and Cypress Creek Landfill (hereinafter “the facility”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2008 Cum. Supp.).

STIPULATIONS

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable

Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2008 Cum. Supp.).

3. On September 7, 2007, the Department issued Solid Waste Disposal Permit (hereinafter "the Permit") number 63-18 to Cypress Creek, Inc. (hereinafter "the Permittee") for the operation of a construction and demolition landfill (hereinafter "facility") located at 6315 12th Avenue East in Tuscaloosa, Alabama.

4. On December 20, 2007, Department personnel inspected the Permittee's facility for compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin Code r. 335-13-4-.23(1)(a)1. requires that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter, and scavenging. At the time of inspection, Department personnel documented a large area of exposed waste. During the inspection, the Permittee's staff stated that the facility had not been covering waste at the required intervals due to equipment failure.

b. ADEM Admin Code r. 335-13-4-.23(1)(i) requires that adequate equipment shall be provided to insure continued operation in accordance with permit and regulations. At the time of inspection, Department personnel documented that the Permittee did not have adequate equipment to ensure operation in accordance with the permit and Division 13 regulations.

5. On January 4, 2008, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee for the violations documented during the December 20, 2007 inspection.

6. On February 5, 2008, the Department received a written response to the January 4, 2008 NOV.

7. On September 22, 2008, Department personnel inspected the Permittee's facility to determine compliance with the ADEM Administrative Code. During the inspection, the following violation was documented:

a. ADEM Admin Code r. 335-13-4-.21(1)(b) requires that waste accepted at the facility shall be strictly controlled so as to allow only waste stipulated on the permit or otherwise as may be approved by the Department. At the time of inspection, Department personnel documented that the facility had accepted industrial waste from Liberty Recycling. The Permittee did not have authorization to accept this waste stream.

8. On September 26, 2008, the Department issued a NOV to the Permittee for the violation documented during the September 22, 2008 inspection.

9. On November 19, 2008, the Department received a written response to the September 26, 2008 NOV.

10. On April 1, 2009, Department personnel inspected the Permittee's facility to determine compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin Code r. 335-13-4-.23(1)(a)1. requires a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter, and scavenging. At the time of inspection, Department personnel documented that waste appeared not to be covered on a weekly basis.

b. ADEM Admin. Code r. 335-13-4-.23(1)(c) requires that all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed a 4 to 1 ratio or as approved by the Department. At the time of inspection, Department personnel

documented that the working face slope exceeded a 4 to 1 ratio and that waste was not confined to one area.

c. ADEM Admin Code r. 335-13-4-.17(2) requires that owners or operators of all facilities must design, construct and maintain a run-off control system from the active and/or closed portions of the landfill to collect and control at least the water volume resulting from a twenty-four hour, twenty-five year storm event. At the time of inspection, Department personnel documented that the Permittee had failed to maintain the sediment control structure in a manner that would allow for adequate run-off control.

d. ADEM Admin Code r. 335-13-4-17(3) requires the owners and operators of all facilities must design, construct and maintain a onsite drainage structures to carry incident precipitation from the disposal site to minimize the generation of leachate, erosion, and sedimentation. At the time of inspection, Department personnel documented that a drainage pipe under the road was blocked causing water to back-up in the facility.

e. ADEM Admin. Code r. 335-4-.23(2)(c) requires completed sites or portions of sites shall be properly closed as provided by this Division and approved facility plans. At the time of inspection, Department personnel documented exposed waste on closed slopes.

f. ADEM Admin Code r. 335-13-4-.23(1)(d) requires that a permitted facility shall be operated in accordance with approved plans and permits. Based on the violations documented during the April 1, 2009, inspection, the Permittee was not operating the facility in accordance with approved plans and permit.

11. On April 7, 2009, the Department issued a NOV to the Permittee for violations documented during the April 1, 2009 inspection.

12. On May 20, 2009, the Department received a written response to the April 7, 2009 NOV.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Facility; the economic benefit which delayed compliance may confer upon the Facility; the nature, extent and degree of success of the Facility's efforts to minimize or mitigate the effects of such violation upon the environment; the Facility's history of previous violations; and the ability of the Facility to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The permittee did not comply with provisions of ADEM Admin. Code Chap. 335-13. The Department has no evidence of any irreparable harm to the environment or any threat to human health or the safety of the public as a result of these violations.

B. **THE STANDARD OF CARE:** The Permittee failed to operate in a manner commensurate with applicable solid waste requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if the Permittee has realized a significant economic benefit as a result of the violations noted. However the Facility did not incur costs associated with operating in accordance with Division 13 Regulations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no observed environmental effects as a result of the violations noted, however, improper runoff control could result in adverse impacts to water quality in the receiving stream.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of similar violations.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.) The Permittee agrees to pay to the Department a civil penalty in the amount of \$6,000.00, payable within 45 days of the effective date of this Order.

B. Payments of the penalty shall be by cashier or certified check made payable to the "Alabama Department of Environmental Management" and remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference the Permittee's name and address, and the ADEM Consent Order number of this action.

C. That, immediately upon the effective date of this Order and each and every day hereafter, the Permittee shall comply with all applicable provisions of ADEM Admin. Code Chap. 335-13.

D. That, within 30 days of the effective date of this Order, the Permittee shall submit a report detailing actions that have been or will be taken to address all violations at this facility.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, State, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of 10 working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement

action as may be appropriate; the Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

J. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of this Consent Order.

K. The parties agree that this Order shall not affect the Permittee's obligation to comply with any federal, State, or local laws or regulations.

L. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The parties agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The parties agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The parties agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Cypress Creek, Inc.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

T. Knox Thomas

(Printed Name)

President

(Printed Title)

10/22/09

(Date Signed)

Onis "Trey" Glenn, III
Director

(Date Signed)